

**CRIMINAL POSSESSION OF A WEAPON  
IN THE SECOND DEGREE  
(Machine-Gun or Disguised Gun  
With Intent To Use Unlawfully)  
Penal Law § 265.03(1)(a) and (1)(c)  
(Committed on or after Nov. 1, 1998<sup>1</sup>)  
(Revised December, 2022)<sup>2</sup>**

The (*specify*) count is Criminal Possession of a Weapon in the Second Degree.

Under our law, a person is guilty of Criminal Possession of a Weapon in the Second Degree when, with intent to use the same unlawfully against another, that person knowingly<sup>3</sup> possesses a  
Select appropriate alternative:  
machine-gun.  
disguised gun.

The following terms used in that definition have a special meaning:

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<sup>1</sup> For crimes committed on or after September 1, 1974, and before Nov. 1, 1998, the statute applied only to the possession of a loaded firearm or machine gun with intent to use the same unlawfully against another. By the laws of 2005, c. 764, and the laws of 2006, c. 742 and c. 745, these provisions were renumbered without substantive change.

<sup>2</sup> The December 2022 revision was for the purpose of revising the definition of "knowingly" and its accompanying footnote.

<sup>3</sup> The word "knowingly" has been added to this definition to comport with statutory law (see Penal Law § § 15.00(2) and 15.05 [2]) and with case law. *People v Persce*, 204 NY 397, 402 (1912) ("the possession [of a slungshot] which is meant is a knowing and voluntary one"); *People v Saunders*, 85 NY2d 339, 341-42 (1995) ("'Possession,' as part of the forbidden act, includes the Penal Law definitional component of '[v]oluntary act,' which incorporates the attribute of awareness of the possession or control . . . . Thus, the corpus delicti of weapons possession . . . is the voluntary, aware act of the possession of a weapon"); *People v Ford*, 66 NY2d 428, 440 (1985) (the offense of possession of a loaded firearm requires that the possession be knowing).

[MACHINE-GUN means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.<sup>4</sup>]

[DISGUISED GUN means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive and is designed and intended to appear to be something other than a gun.<sup>5</sup>]

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>6</sup>

A person KNOWINGLY possesses a (specify) when that person is aware that he or she is in possession of an object that is a (specify). That person need not know (that is, be aware of) the object's name or whether it meets the definition of a (specify).<sup>7</sup>

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<sup>4</sup> See Penal Law § 265.00(1).

<sup>5</sup> See Penal Law § 265.00(20).

<sup>6</sup> See Penal Law § 10.00(8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, insert the appropriate instruction from the "Additional Charges" section at the end of this article.

<sup>7</sup> See Penal Law § 15.05(2). See *People v Parrilla*, 27 N.Y.3d 400, 405 (2016) (when possession of a gravity knife was a crime, defendants were required to know that "they possessed a knife" but the People were not required "to prove that defendants knew that the knife in their possession met the statutory definition of a gravity knife"); *People v Hernandez*, 180 AD3d 1234, 1237 (3d Dept 2020) ("Contrary to defendant's contention, the court was not required to instruct the jury that the People were required to show that defendant was aware of the legal definition of a blackjack. The characteristics of the blackjack at issue—a lead core, surrounded by leather, which is flexible and used as a weapon—make 'the inherently dangerous nature of the prohibited object be readily apparent, so as to put [defendant] on clear notice that the object is potentially subject to government regulation or prohibition' . . . . Accordingly, the People did not have to prove that defendant was aware of the (continued)

INTENT means conscious objective or purpose.<sup>8</sup> Thus, a person acts with intent to use a [machine-gun] [disguised gun] unlawfully against another when his or her conscious objective or purpose is to do so.<sup>9</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about     (date)    , in the county of     (county)    , the defendant,     (defendant's name)     possessed a [machine-gun] [disguised gun];
2. That the defendant did so knowingly; and
3. That the defendant possessed the [machine-gun] [disguised gun] with the intent to use it unlawfully against another.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

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statutory definition of a blackjack”); *People v Steinmetz*, 177 AD3d 1292, 1293 (4th Dept 2019) (“The People were not required to establish that defendant knew the rifles met the statutory criteria of an assault weapon but, rather, only that he knowingly possessed the rifles”); *People v Abdullah*, 206 AD3d 1340, 1344 (3d Dept 2022) (knowing possession of a slungshot is required but a defendant need not know the dictionary definition of slungshot).

<sup>8</sup>See Penal Law § 15.05(1).

<sup>9</sup>Where the People rely on a statutory presumption of intent, insert the appropriate instruction from the “Additional Charges” section at the end of this article.